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Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/ South Ossetia, Georgia

Report of the Secretary-General

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 63/307 of 9 September 2009, entitled "Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia", in which the Assembly requested the Secretary-General to submit a comprehensive report at its sixty-fourth session on the implementation of the resolution. The report, which covers the period from 16 July 2009 to 30 May 2010, draws on information received from a number of United Nations entities.

2. In accordance with the provisions of the above-mentioned resolution, the report focuses on: (a) right of return of all refugees and internally displaced persons and their descendants, regardless of ethnicity; (b) prohibition of forced demographic changes; (c) humanitarian access; (d) importance of preserving the property rights of refugees and internally displaced persons; and (e) development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes.

II. Background

3. Following an escalation of conflict in 1992, which caused significant displacement of civilians, armed hostilities between the Georgian and Abkhaz sides ended with the signing in Moscow on 14 May 1994 of the Agreement on a Ceasefire and Separation of Forces (see S/1994/583 and Corr.1). This agreement was preceded by the signing in Moscow on 4 April 1994 of the quadripartite agreement on voluntary return of refugees and displaced persons (see S/1994/397), in which the parties agreed to cooperate and to interact in the planning and conduct of activities to guarantee the safe, secure and dignified return of people who had fled from areas in the conflict zone to areas of their previous permanent residence. Armed hostilities between the Georgian and South Ossetian sides ended with the 24 June 1992 Sochi Agreement, which established a ceasefire between the Georgian and South Ossetian forces and the creation of the Joint Control Commission and Joint Peacekeeping Forces.

4. Following the hostilities which started in the Tskhinvali region/South Ossetia on 7 and 8 August 2008, in line with the six-point plan of 12 August 2008 and the measures for its implementation, agreed on 8 September 2008 (see S/2008/631, paras. 7-15), international discussions were launched in Geneva on 15 October 2008 under the co-chairmanship of the European Union, the United Nations and the Organization for Security and Cooperation in Europe (OSCE) (see S/2009/69 and Corr.1, paras. 5-7). These discussions were to address security and stability and humanitarian issues. By the end of the reporting period, 11 rounds of discussions had been held, with participants meeting in two parallel working groups: Working Group I, which addresses security issues, and Working Group II, which deals with humanitarian issues, including matters related to the facilitation of the voluntary, safe and dignified return of internally displaced persons and refugees. Working Group II addresses a multifaceted agenda, including the principle of the right to return; it also engages in detailed discussions on the establishment of conditions conducive to safe and sustainable return and related issues, such as property rights and access for humanitarian activities, and proposals related to possible practical measures, including the technical aspects of registration, profiling and "go-and-see"

visits. At present, the Geneva discussions are the only platform for relevant stakeholders to address the specific matters covered in General Assembly resolution 63/307.

III. Right of return

A. Scope of displacement, return and local integration

5. No major developments took place during the reporting period with regard to the exercise by the refugees and internally displaced persons of their right to return. Minor return movements were observed in the areas adjacent to the Tskhinvali region/South Ossetia, bringing the total number of displaced persons returning to these areas to over 30,000. However, some families and individuals who had returned had to leave once again, owing mainly to security concerns or lack of access to sources of livelihood, including their fields, orchards and traditional grazing grounds. In relation to Abkhazia, there is some indication (such as school enrolment data) that individual families have returned or are in the process of returning to the Gali district.

6. According to information provided by the Ministry for Refugees and Accommodation of Georgia, dated 31 December 2009, there were 249,365 internally displaced persons in Georgia, of whom 233,453 (93.6 per cent) were persons displaced during and following the Georgian-Abkhaz conflict in the 1990s. Data provided by the Ministry of Foreign Affairs of Georgia in May 2010 refer to 278,707 persons holding internally displaced status under national legislation. According to the Ministry for Refugees and Accommodation, as of January 2010, 21,456 individuals from among those displaced during the August 2008 conflict had been relocated; of those individuals, 13,820 were granted internally displaced status and relocated to government-built settlements, 2,082 were granted internally displaced status and provided with monetary compensation and 5,554 were allocated government cottages but their internally displaced status under national legislation remains pending. The remaining 3,472 individuals, displaced during the August 2008 conflict primarily from the areas adjacent to the Tskhinvali region/South Ossetia, were either not yet able or willing to return home, were not yet provided with a durable shelter solution or determination of their status under national law was still pending. According to the information provided by the Ministry of Foreign Affairs in May 2010, 20,800 persons displaced as a result of the August 2008 conflict and 10,911 families displaced from earlier conflicts were provided with durable housing solutions.

7. It is estimated that over 45,000 people may have spontaneously returned or are in the process of returning to their homes, primarily in the Gali district, although they are still considered internally displaced persons in Georgia and are eligible for assistance from its Government. However, their reintegration process has not been concluded, as many of them are still facing challenges resulting from their earlier displacement, such as the need to repair or rebuild durable housing and to re-establish sustainable means of subsistence.

8. More precise and comprehensive data on the numbers and profiles of people who have returned, or of other conflict-affected populations residing in this area, are not yet available. For several years, my Representative on the human rights of

internally displaced persons and the United Nations High Commissioner for Refugees have called on the parties to conduct a verification and profiling exercise as a first step to better assessing the protection and assistance needs of spontaneous returnees and their host communities. The conduct of such an exercise, as initially agreed upon by both parties in 2005, was supported by the Security Council in its resolutions 1752 (2007), 1781 (2007) and 1808 (2008). This issue was also on the agenda of Working Group II during the tenth round of the Geneva discussions on 30 March 2010, as part of the information session which addressed the technical aspects of registration, sampling and profiling of the affected populations. Unfortunately, no consensus was reached on the implementation of such an exercise.

9. Since the conflict in August 2008, the United Nations agencies, programmes and funds have had no operational access from the Government-controlled territory to the Tskhinvali region/South Ossetia and are therefore not in a position to verify or closely monitor displacement or return movements. The official website of the Federal Migration Service of the Russian Federation refers to 3,331 families from Georgia, consisting of 4,234 persons, which have applied for recognition as refugees in the Russian Federation during the period from 2004 to October 2009; 157 families, consisting of 200 persons, which have been recognized as refugees and remained registered as such by the Federal Migration Service at the end of October 2009; and 1,828 families, consisting of 2,160 persons, which were granted temporary asylum during the same period. According to the Service, six persons from the Tskhinvali region/South Ossetia applied for refugee status in 2008, and two persons from the Tskhinvali region/South Ossetia and three from Abkhazia applied for temporary asylum in 2008 and 2009.

10. The actual number of refugees from Georgia to the Russian Federation is considered to be significantly higher, many having acquired Russian citizenship and therefore not reflected in the official statistics. Moreover, it is estimated that some 10,000 persons remain displaced within the Tskhinvali region/South Ossetia.

B. Institutional framework and operational measures

11. Since late 2005, the Office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian partners have been implementing "Strategic Directions for Abkhazia", a project developed in consultation with all stakeholders and referred to in Security Council resolution 1781 (2007). This has brought together, as strategic partners under the overall coordination and leadership of the United Nations Resident Coordinator, a number of United Nations entities and international organizations engaged in humanitarian and development activities, namely: Action contre la faim internationale, the Danish Refugee Council, the Norwegian Refugee Council, Première urgence, World Vision International, the Swiss Agency for Development and Cooperation, the United Nations Children's Fund, the United Nations Development Programme, UNHCR and the World Food Programme.

12. The above-mentioned project is aimed at contributing to bottom-up peacebuilding through targeted assistance based on self-reliance and community involvement. It integrates protection and assistance efforts through returnee monitoring and targeted assistance projects, and by addressing returnee concerns in discussions with all relevant authorities. Building on the 2008 joint needs

assessment by United Nations agencies, programmes and funds, a prioritization exercise is being conducted, aimed at identifying and addressing the most compelling humanitarian needs.

13. During the reporting period, the Government of Georgia has formulated and endorsed a plan of action, entitled "State strategy on occupied territories: engagement through cooperation". The strategy outlines a number of areas for engagement and cooperation, including, among others, economic cooperation, health care, education, people-to-people contacts, and preservation of cultural heritage. For any operational framework and/or liaison mechanism to be effective and serve its aims, it must be accepted and supported by all sides.

14. The United Nations Resident Coordinator, together with the partners, has also engaged in negotiations with all sides with a view to establishing a framework of engagement that respects humanitarian mandates and activities of the partners, clarifies basic rules of engagement, and permits the pursuance of participatory and human rights-based approaches in the design, planning and implementation of projects. These negotiations are also aimed at preserving and expanding humanitarian space in order to further develop the thematic and geographical scope of engagement by the partners.

15. Humanitarian activities with a focus on spontaneous returnees and persons in the process of return in the Gali, Ochamchira and Tkvarcheli districts have continued. Achievements in 2009 include the building of 129 and rehabilitation of 155 houses and apartments to provide returnees and other members of the conflict-affected population with a durable housing solution; the establishment of social community centres in 17 villages, designed to mobilize local communities and to address some key obstacles to sustainable return by providing, inter alia, medical assistance and income and educational opportunities; the development of income-generating activities and improvement of livelihood projects, benefiting 2,300 households; and ensuring that 54 schools and kindergartens can remain operational throughout the winter, partly through the provision of firewood.

16. In general, humanitarian assistance continues to be provided in both returnee and non-returnee areas, contributing to confidence-building among communities and involving measures to increase the capacity of civil society actors to respond to the humanitarian needs of the population.

17. Members of the population in the Gali district, including spontaneous returnees and persons in the process of return, have expressed concern about recent developments related to movement across the Inguri River and the impact of these developments on their own freedom of movement. Access to social infrastructure, including medical facilities, in the Zugdidi district, together with the possibility of maintaining family contacts and accessing markets, remains important for them. The need for some form of managed, mutually accepted crossing regime will be crucial for improving living conditions for the Gali population, advancing reintegration of returnees and preventing renewed displacement. A related protection challenge is the need to find solutions for documentation which conforms to international law, including human rights law, and determine the general principles governing the prevention and reduction of statelessness.

18. With regard to the principles and factors governing the implementation of the return of internally displaced persons, the observations made in my previous report

(A/63/950), in particular its paragraphs 8 to 14, remain valid. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex) must be respected in all phases of a displacement cycle. They should also govern the preparation and implementation of return operations and the treatment of returnees and "be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction" (principle 2, para. 1).

19. A verification and profiling exercise of spontaneous returnees in the Gali district remains critically important for obtaining a clearer picture of the legal, social, economic and security conditions in the areas of return and for establishing the number of returnees involved, their profile and their needs, especially as regards any particular vulnerabilities, as well as the needs of the host communities. This information will enable better targeted and more effective interventions, as well as informed planning for further returns. Such profiling of the returnee population would also clarify the magnitude of seasonal movements and factors influencing seasonal or temporary returns.

20. Due to unresolved issues in finding agreement on the modalities governing humanitarian access, United Nations entities are presently not able to operate in the Tskhinvali region/South Ossetia, and no humanitarian activities can be conducted. These limitations have not precluded activities of the International Committee of the Red Cross in the Tskhinvali region/South Ossetia, regular visits to Tskhinvali by the co-chairs and co-moderators of Working Group II of the Geneva discussions, or the provision by UNHCR of facilitation and safe transport to the crossing point for asylum-seekers deported from third countries and who wish to return to their homes in Tskhinvali.

IV. Prohibition of forced demographic change

21. International human rights standards, as developed during recent decades, provide guidance on managed population movements and evacuations and thereby strictly limit forced movements that result in demographic change. Under Principle 6 of the Guiding Principles on Internal Displacement, every human being has the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. A number of provisions of international law,[1] such as article 12 of the International Covenant on Civil and Political Rights, guarantee not only the right to liberty of movement but also freedom to choose one's residence, including the right to remain there.

22. In this context, the Representative of the Secretary-General on the human rights of internally displaced persons noted with concern the high degree of destruction of civilian houses and structures in Tskhinvali, which was caused by the Georgian armed forces resorting to weapons that have an indiscriminate effect in urban areas (see A/HRC/13/21/Add. 3 and Corr.1-2, paras. 7-14). Noting that much

[1] Universal Declaration of Human Rights (art. 12); International Covenant on Civil and Political Rights (arts. 12, para. 1, and 17); American Convention on Human Rights (arts. 11 and 22, para. 1); African Charter on Human and Peoples' Rights (art. 12, para 1); European Convention on Human Rights (art. 8) and Protocol No. 4 thereto (art. 2, para. 1); Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (arts. 49 and 147), Protocol I thereto (arts. 51, para. 7, 78, para. 1, and 85, para. 4) and Protocol II thereto (arts. 4, para. 3 (e), and 17); and International Labour Organization (ILO) Convention No. 169 (art. 16).

of the displacement was caused or followed by violations of international humanitarian law committed by the parties to the conflict, my Representative expressed particular concern about the deliberate destruction and looting of ethnic Georgian villages by South Ossetian militia, aided by other armed elements and civilians in areas in which tensions had been high even before the conflict. Some of the villages had been completely destroyed, making a return of the former inhabitants in the near future physically impossible.

23. My Representative also recalled that pillaging and the extensive and deliberate destruction of civilian property without military justification constitute grave breaches of international humanitarian law. Military forces, which have established control over a territory, are required to uphold law and order and prevent breaches of international humanitarian law committed by members of their own forces or other persons under their control (A/HRC/13/21/Add. 3 and Corr.1-2, para. 15).

V. Humanitarian access

A. International legal foundations governing humanitarian access

24. It remains important that all sides respect all of their obligations, act in good faith and enhance their efforts to implement fully the principle of humanitarian access, which finds its roots in both international human rights law and international humanitarian law. The free passage of relief goods and the facilitation of humanitarian operations are correlated to a number of human rights, including right to life, right to a decent standard of living and protection against discrimination. Moreover, building on the practice of the United Nations human rights treaty bodies, there is a growing acceptance that the obligation of States to respect, protect and fulfil human rights includes an obligation to invite, accept and facilitate international humanitarian assistance, in particular if the State's resource capacities or other obstacles, such as the lack of effective control of parts of the territory, limit its capacity to address effectively all humanitarian needs.

25. In situations of international conflict, international humanitarian law requires that rapid and unimpeded passage of all relief consignments, equipment and personnel be allowed and facilitated. In non-international conflicts, States must organize relief actions for the civilian population, without adverse distinction. The universal acceptance of these rules has established as a norm of customary law in both international and non-international conflicts, that parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.

B. Operational challenges

26. During the reporting period, the Government of Georgia revised and amended its Law on the Occupied Territories, taking into consideration recommendations issued by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe and others. Persons seeking asylum or providing emergency humanitarian assistance will not be covered by the restrictions on free movement as foreseen by the law, but subjected only to an obligation to inform the authorities. The possibilities for lifting restrictions on movement and on

economic activity by way of waivers have been widened. While amendments to the law have addressed some of the concerns expressed by the humanitarian community and constitute notable progress, several provisions still remain vague. Due to uncertainty concerning their interpretation and the procedures for their implementation, as well as their effectiveness, a close monitoring of the application of the law will be needed to determine its possible impact on humanitarian access and humanitarian operations.

27. Following the August 2008 conflict, the United Nations has been able to maintain humanitarian access in Abkhazia and implement protection and humanitarian assistance activities during 2009, as planned. Further discussions on the modalities governing future humanitarian operations are ongoing with all stakeholders.

28. Since no agreement has been reached on the modalities governing humanitarian access, United Nations entities have not been able to operate in the Tskhinvali region/South Ossetia and provide humanitarian assistance to the internally displaced and returnees there, or contribute to the creation of conditions for sustainable and voluntary return in safety and dignity. The continued lack of access remains a major concern and needs to be addressed, taking into account the recommendations made by my Representative on the human rights of the internally displaced persons (see A/HRC/13/21/Add.3 and Corr.1-2, sect. IV).

VI. Property rights of refugees and internally displaced persons

29. No major developments took place during the reporting period in relation to respecting, protecting, documenting or re-establishing the property rights of displaced persons. The resolution of property-related issues in Abkhazia remains highly complex and contentious, in particular due to gaps in property registration and disagreement over applicable norms linked to the status issue. This has resulted in significant legal insecurity as regards property rights and related transactions, which has negatively affected local populations and returnees, as well as displaced persons who are considering return. The matter is being examined by participants in the Geneva discussions, within the framework of Working Group II.

30. The matter is further complicated by a number of additional factors, inter alia: the multiple, legal transition processes which followed the dissolution of the Union of Soviet Socialist Republics (which did not foresee private real estate property but rather the instrument of land usage rights); the forced relocation, eviction and expropriation practices of the Soviet era; and the controversial property transactions immediately prior to and following the dissolution of the Union of Soviet Socialist Republics, including the decisions of the so-called housing commissions which raise questions over the legality of transactions.

31. Similar challenges exist in relation to the protection of property rights of displaced populations in and from the Tskhinvali region/South Ossetia. In this context, it must be noted that the Law of Georgia on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetia District is not yet implemented in practice.

32. In order to preserve and protect the property rights of refugees, internally displaced persons and their descendants, and to move towards their full enjoyment

of these rights and the implementation of measures of restitution or compensation, the parties must resolve the complex legal and political issues that impede progress. In doing so, the principles on housing and property restitution for refugees and displaced persons ("Pinheiro principles") and international law, including human rights law, have to be fully respected. The United Nations agencies, programmes and funds remain committed to assist in addressing these challenges.

VII. Timetable for the voluntary return of all refugees and internally displaced persons

33. Given the prevailing environment and continuing discussions between the parties over status issues, it is premature at the present stage to develop a timetable for the voluntary return of all of the refugees and internally displaced persons who wish to avail themselves of this right. As long as conditions for organized returns in safety and dignity are not fulfilled by the parties and mechanisms for property restitution are not established, the timetable for returns remains open.

34. In the absence of conditions conducive to organized returns and appropriate implementation mechanisms, United Nations entities will continue to concentrate their efforts on providing the conflict-affected populations, including spontaneous returnees, with humanitarian assistance and support for their reintegration, and on promoting confidence-building measures. Such efforts will seek to identify and promote practical steps with a view to developing a longer-term vision for the implementation of the right to return. As an example of such efforts, during the tenth round of the Geneva discussions an information session was organized on the technical aspects of "go-and-see" visits and related international practice with the aim of promoting a professional dialogue on the issue.

35. The United Nations entities remain ready to proceed, in consultation and cooperation with the parties concerned, with the development of a timetable that will address all components outlined in my previous report (A/63/950), in particular paragraph 20 thereof, once the situation allows.

VIII. Conclusion

36. The international discussions held in Geneva, under the co-chairmanship of the European Union, OSCE and the United Nations remain the only forum in which the issues related not only to security and stability in the region but also to humanitarian problems, including those concerning refugees and internally displaced persons, are being addressed. These discussions remain difficult, in part due to the complexity of the issues under discussion and their interrelated nature. In order to achieve concrete and practical results in addressing the humanitarian needs, I urge all participants in the Geneva discussions to engage constructively, with a genuine will to improve the situation of the local population.

37. The United Nations stands ready to assist in implementing the agreed steps and measures, including by facilitating the provision of expert advice and resources and further engaging on the ground. Since my previous report, the co-chairs of the Geneva discussions have undertaken five field visits, with additional visits by international experts working in support of their efforts. As a result, a number of

additional proposals have been provided to the parties concerned; work is ongoing to formulate further suggestions that could help to address the most immediate humanitarian needs.

38. The lack of agreement on political issues should not be used as a pretext for not addressing the needs of all refugees and internally displaced persons, regardless of where they are currently located. In this regard, it is important that the discussions in Geneva continue and that they translate into concrete progress, including through reaching agreement on practical steps and measures to be taken on the ground. This can only be accomplished if the key stakeholders which are party to these discussions engage with flexibility and determination, with a view to addressing a range of humanitarian issues and improving the conditions of the population, including those who remain displaced.